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FIRST SPEECH

OF

David Paul Brown,

DELIVERED IN 1818,

IN THE CASE OF THE COMMONWEALTH OF PENNSYLVANIA AGAINST

JOHN BINNS,

FOR

ASSAULT AND BATTERY.

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FOR THE PROSECUTION.—G. M. DALLAS, DAVID PAUL BROWN.

FOR THE DEFENCE.—JOS. R. INGERSOLL, JOSIAH RANDALL.

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1858.



THIS FIRST PROFESSIONAL EFFORT

*Is Inscribed,*

AS A MARK OF AFFECTIONATE SYMPATHY AND REGARD,


TO

THE YOUNG, THE FRIENDLESS, THE FAITHFUL AND THE FEARLESS

MEMBERS OF THE PHILADELPHIA BAR,

WITH THIS INJUNCTION,

“TO YOURSELVES BE TRUE,  
So shall it follow, as the night the day,  
You cannot then be false to any man.”



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# Speech.

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IN SUBMISSION TO THE COURT,  
GENTLEMEN OF THE JURY:—

THE unusual concourse of spectators and auditors here assembled: The interest and anxiety expressed in the countenance of every one: The zeal and abilities of the gentlemen to whom I am opposed; the painfully solicitous emotions of my own bosom, all refer me to the importance of the cause in which I am engaged. Important, not simply as respects this poor child, or me, her humble advocate, but as regards the jury who sit here to decide, as regards your honors who sit there to adjudge, and as relates to the world. I say, it is important in relation to the world, because the principles upon which this case is to be decided, are intertwined, I might say identified, with the nearest and dearest feelings of the human heart. Impressed with this idea, I cannot but regret the great and manifest



embarrassments under which I labor—embarrassments not simply arising from my youth and consequent inexperience, but resulting in an eminent degree, from the magnitude of the issue in which I am engaged, and the abilities of the gentlemen to whom I am opposed. Nor is this wonderful : for such is the constitution of the human mind, that our very fear frequently occasions that which we fear, and in proportion as we feel ourselves called upon for great exertions, in the same proportion we are frequently compelled to acknowledge an utter inability to obey that call.

There is also another disadvantage under which I labor in common with my professional brethren, and which I beg leave as far as possible to endeavor to remove,—I mean the prejudice too generally entertained by jurors to whom a case may be submitted, that whatever may be the force or quality of the arguments of counsel, they are still entitled to but little weight, inasmuch as they are the offspring of the pocket, not the heart—or in other words, the effect of pecuniary influence, rather than of any inclination to be serviceable to our fellow creatures. Whether this be just or unjust—liberal or illiberal, it is not necessary for me to inquire ; but I conceive it to be a duty which I owe to the profession, to my client, to you, and to myself, here upon the threshold of this case, unreservedly and explicitly to declare, that I am no hired advocate ; I appear before you upon this occasion



without any other bribe than my sympathies ; without any other object than disinterested humanity ; without any other motive than impartial justice. I have no friendship for this poor child, but that which arises from her misfortunes and distresses—I have no enmity to Mr. John Binns, but that which arises from his barbarity and cruelty. “*Homo sum et humani a me nil alienum puto.*” This principle is considered a sufficient inducement ; should any excuse be necessary, I trust it will prove a sufficient excuse.

Having thus endeavored to remove those obstacles or impediments which stood between me and the case, at least so far as they were removable, let us now turn our attention to the more immediate subject of the present controversy. In doing this however, I cannot, as the opposite counsel have done, with perfect propriety, invoke the political or social importance of my client, in order to give weight to my argument. Alas ! she has neither. I stand here before you not in behalf of a powerful and influential citizen, supported by relatives and surrounded by friends ; I address you in the cause of a helpless, hapless and unprotected child, torn by the storms of adversity from the bosom of her parents and her country ; a child whose only safeguard from oppression in this land of strangers, is the verdict of an American Jury ;—whose only unshaken hope of reliance is in the Father of the fatherless. This, allow me to say, is no professional cant, gentlemen, it is the

spontaneous effusion of the heart, the sacred voice of sympathy. Indeed, I should abhor myself, could I, upon an occasion like this, where the indignant and impatient soul is struggling for utterance, coolly and deliberately and dispassionately indulge in the vanity of chosen expression. Nature requires not the aid of art, and had you beheld, as I did, the lacerated, mangled, and bleeding limbs of this poor helpless child; had you seen, as I did, the swollen tear of agony that trembled in her eye; had you heard, as I did, the sympathetic and impressible groan that burst from the assembled multitude in the hall of justice, in contemplating her suffering, (that groan which was the unerring testimony that nature bore to the barbarity of this procedure,) it would be a wanton and an unpardonable trespass upon your time and that of this honorable court, were I to occupy a single moment of your attention. Nothing, says the poet, can be added to perfection :

“ To gild refined gold, to paint the lily,  
To throw a perfume on the violet,  
To smooth the ice, or add another hue  
Unto the rainbow; or with a taper light  
To seek the beauteous eye of heaven to garnish,  
Is wasteful and ridiculous excess.”

Not less wasteful—not less ridiculous were every attempt of mine to unfold the horrors of this most hor-



rible transaction. The deed—the blushing deed itself, distances every effort of speech, and baffles all attempts at description. The language of man is amply adapted to the common excitements of life, but weak and cold and callous must be that heart, which upon occasions like this does not feel more than the tongue can express.

This, then, is the character of that case, which the counsel, adopting the principles and conduct of their employer, have attempted stigmatizing with malice, as they attempted stigmatizing this poor child with theft, and both because they are *fatherless*.\* This is the case which was to have been ridiculed out of court. But it will not do ; thank heaven, honest nature is too true to herself either to be laughed *into*, or *out* of countenance. The smiles that mantled over their features were as superficial as the artifice that gave birth to them ; the heart I am sure had no concern in either ; it was a mere veil, thrown over their wretched cause to conceal its rottenness and deformity.—The convulsive laugh of desperation, while tottering on the brink of ruin—the hectic glow of health on the cheek of consumption—the last cheerful effort of their expiring cause.

But, gentlemen, let us not wander—let us not anticipate. We owe something, it is true, to feeling in such a cause, we owe more to reason, but we will, notwithstanding, endeavor as calmly and dispassionately as possible

\*The defendant's counsel moved the court to dismiss the case because there was no prosecutor indorsed on the bill.

to investigate and determine the merits of this discussion. The facts of the beating being admitted, or at any rate proved beyond the necessity or reach of argument, the remaining facts of the case, appear properly and naturally to marshall themselves under these two distinct points of inquiry.

1st. Was any beating deserved ?

2d. Was the beating inflicted justifiable ?

If either of these inquiries be negatively decided, the defendant must be convicted. If no beating was deserved, then the weight of a finger in anger is an assault and battery, and we must have a verdict. Or if the first part be affirmed, and you should be satisfied that a beating was deserved, still if the beating inflicted was unwarrantable and unreasonable, all defence must fail.

Have the goodness to keep these points in view,—neither be driven from them by force, nor seduced by ingenuity. They will serve as guiding stars to your councils. *With* them you will steer securely to correct conclusions,—*without* them, you will be launched at once upon the ocean of investigation, without helm or rudder—without chart or compass—to direct you in your course.

In relation to the first point, permit me to observe, that there has been no proof of theft, nor can any be produced. The honest, artless conduct of this poor child, is “all the world to nothing” against this foul and



unmerited aspersion. They have mangled her body, and with fiend-like vengeance, unsatisfied with that, they now attempt stabbing her infant reputation.

“Spotless reputation, which away,  
Men are but gilded loam, or painted clay.”

But even this shall not avail them. I pledge myself to furnish you with a clearer and fairer interpretation of this mysterious transaction. Since the weight of shame must fall somewhere, let broader shoulders bear it. For my part, I have not the shade of a doubt, and if you believe the testimony you must concur in the opinion, but that the money was really *given* to Anna Maria Martin, which she is now charged with having *stolen*. Do you call for the proof? Do you not see that the story of Benjamin Binns corroborates that of the child in every particular except one—I mean the *gift*; to acknowledge *this* were ruin. He tells you that Mr. Binns and his lady rode out on Saturday,—that Anna Maria came for money to provide bread, and that she afterwards came to call him to supper. This is precisely the story of the child, but she goes further, and says that when she called him to supper, he gave her nine-pence, requesting her afterwards not to reveal it to his brother.—And why this desire of concealment? It is easily accounted for when we remember that it is agreed on all hands that Mr. John Binns had forbidden his brother to give money to Anna Maria, as it seems



he had prior to this time, been in the frequent habit of doing. Of this you must be fully convinced, that upon a candid examination of their respective stories, there is every reason to give credence to that of the child. She had no inducement, she had no power to misrepresent,—from the first to the last, her testimony has been the same; natural, uniform, and consistent; alike free from cunning and constraint. Of his testimony, on the contrary, we may at least say it is suspicious. His connection with the defendant, his dependence upon the defendant, of necessity have some influence upon his mind; added to which, having early asserted her guilt to his brother, he dare not deny it now. Having sworn to it before the mayor, he dare not now forswear himself. To bolster up their case as well as possible, and to withdraw your attention from the proper subject of controversy, they have contrived to drag in the countenance of Mr. Benjamin Binns, I presume, as a sort of rallying-point to their defeated hopes. But gentlemen, this is not a case of countenance, and if it were, their condition is in no wise improved. Come hither Anna Maria Martin,—lay off your hat,—look at the jury,—poor child, though her features are dressed in sorrow, though the joyless tear bedews her sparkling eye, still I may with propriety say, that it suffers nothing in a comparison with Mr. Benjamin Binns, nor any other member of the Binn's family that I have hitherto seen. This then is the relative

position of the prosecution and defence. Let us for a moment compare the testimony ; weigh them,—the one clearly preponderates, while the other kicks the beam ; test them,—the one evaporates in air, the other assumes a firmer texture, and lays a closer hold upon the heart ; analyze them,—the defendant's testimony dwindles into dross, while that on behalf of the prosecution

“ Like purest gold, that's tortured in the furnace,  
Comes forth more bright, and brings forth all its weight.”

The next witness in the order of merit, adduced by the defendant is Mary Caldwell, who lived with Mr. Binns, when Anna Maria was bound, and continued living with him a considerable time after. What does she say? nothing to the purpose : “ Anna Maria was not very good nor very bad. I believe there were complaints, chiefly from children in the family, with whom she quarelled and disagreed. I often saw her have money, about which she sometimes told different stories. I remember no particular instance. There was no money in places she could get it from. Her character was not good.” Hence it seems, that Mrs. Caldwell did not entertain the most favorable opinion of this child, and the next inquiry, is what opinion shall we entertain of Mrs. Caldwell. She comes before us perfectly unknown, perfectly unsupported, and for what purpose? Not to testify to the general character of Maria; not to



say what reputation she sustained in the neighborhood, which would afford us an opportunity of refutation, but to declare her individual opinion, and thus to blight the opening prospects of this child, without being able to supply us with a single doubtful virtue from which this opinion may have been derived. This is weaker than air, and lighter than vanity. Probably Anna Maria has quite as unfavorable an opinion of Mrs. Caldwell, and how are their respective merits to be adjusted? It was a saying of Agesilaus, the renowned king of Sparta, that the character of an informer is as necessary to be known, as that of the person informed against, "and it is a well settled maxim, both in reason and law, that the character of every one should suffer, in proportion to the weight of his character who bears testimony against it." How then, upon these principles, stands the account? what unquestionable title to belief has the witness produced. What all powerful and mysterious charm does she possess, that is at the same time to prostrate the characters of others and yet preserve her own unsullied and unharmed. But I will press this matter no further, it is at all times painful to me to derogate in the slightest degree from the reputation of any one, or throw upon them a shade of imputation, and if upon the present occasion I have violated my general disposition, let the opposite party remember that to them it is to be imputed, and let them also remember, to use the homely but forcible illustration of

the proverb, That those persons who live in glass houses should not throw stones.

The next witness whom you have had examined is Mrs. Susan West, who occasionally nurses Mrs. Binns. (Read this lady's testimony.) Here there are petty childish quarrels raked up from all parts of the house,—from the cellar to the garret, from the kitchen to the parlor,—as the materials of a defence. Nothing is too trivial or minute to escape their attention,—cleaning the knives and forks is called in to their aid, and even brick-dust itself, is relied upon as giving color to this defence. She was not cleanly in her person ! Have they shown that she was well supplied with raiment ; that the cause was not with the master ; if not, her uncleanness does not make their case the whiter. In short, the evidence of Mrs. West proves no beating deserved, and if it operates at all, it is unquestionably in our favor. The story of Kelly—fifteen years of age,—the chit-chat of Magdaline—thirteen years old, and the say-so of *young* Nicholas,—I consign at once into utter oblivion, as matter of indifference or contempt. Their representations are probably strictly true, but they have nothing to do with the controversy ; and if they were clearly all untrue, I should pass over them in silence, as my province is to *defend* not to *ruin* children, to *excuse* not to *abuse* their errors, to *extenuate*, not to *aggravate* their crimes.

Here ends the elaborate defence ; upon this slender



basis, for this is substantially all, you are called upon to acquit the defendant, and destroy this child—to justify this barbarity, by charging her with theft. And yet all the charges brought against her,—unable to speak and defend herself, lisping an equivocal and to her, uncertain language,—might with just as much probability and proof, be produced against the children of any one of you.

Leaving you, then, to decide upon this testimony, without further remark, upon the course of reflection, already suggested, I think you must be perfectly satisfied that no theft has been proved—no impropriety of conduct established against Anna Maria Martin, and consequently that this beating, was as wanton and undeserved as it was cruel, barbarous, and bloody.

There is one thing, however, that it may be proper here to observe, and which to me is convincing and conclusive as to the testimony of the innocence of this child, and that is her resolute refusal to confess her guilt, under the giant arm of her cruel master. Neither fear nor hope could induce it. “My brother denies the gift, confess your crime, acknowledge yourself a *thief*, come stab your *soul*, and I will *spare* your *body*!” This is, in effect, the exhortation of the tyrant. What is her reply? “I have told the truth; your brother *cannot* deny it; let him be called—let me confront him.” Alas, poor child, you rested on a broken reed, when you leaned upon Mr. Benjamin Binns,—when you trusted to



the compunctious visitings of his conscience. He appears ; again he persists in his denial ; and again her infant limbs writhe beneath the inhuman lash. They may extort groans, but not falsehoods. The flesh shrinks, but the soul still stands firm. Merciful heaven ! can such things be, in a charitable, christian land ? Despots may exercise their power upon the rebellious or refractory, and thereby punish, and subjugate them to their arbitrary will ; but there is something in the female character—there is something in *infancy*—something in feebleness and helplessness, that should palsy or unnerve even a tyrant's arm. “How shall we hope for mercy, rendering none ?” (Great applause.)

But to recur to our proposed arrangement. You must be convinced, I say, that the punishment was undeserved and unmanly, and inflicted even without the shadow of a cause ; yet that we may meet the case in every possible aspect, confront it at every point of the compass, and leave them not an inch of ground upon which to plant their defence, let us suppose for a moment, as a matter of argument, what, remember, I unequivocally deny, that this child was *guilty* of the sin imputed to her, and proceed to the second proposed point of inquiry.

2nd. Was the beating inflicted justifiable ?

You have heard what has been uttered against her,—a mere mouse from a mountain of malice ; you know her fault ; what was the punishment ? Has the defendant produced any testimony that can be relied upon ? has

he produced a single witness, out of the thousands who beheld the misery of this child, to testify to his moderation? Not one! Some of the doctors who saw her several days *after* the beating, thought her at that time not dangerous, and it is highly probable had they even seen her *before*, when her back was covered with welts, and perfectly discolored with extravasated blood, they might have entertained precisely the same opinion. But the *danger* is not the criterion of moderation; had she been perfectly flayed alive; had, as was supposed by one of the witnesses, a red hot gridiron been applied to her back, it might not in the view of those gentlemen have been dangerous; but I am certain it would have been brutal; I am certain it would have been barbarous; I am certain it would never have received the countenance or sanction of a benevolent and humane American Jury.

Far be it from me to impute any natural hardness of heart to those medical gentlemen; but we all know the duties of their profession; we have all felt the force of habit and familiarity, and perhaps it is not venturing too much to say, that men who have spent a considerable part of their lives in the slaughter-house of their species, surrounded by all the imagery of death and disaster, are at least, not those whose opinion should govern in the construction of this case. If a doctor were called upon to define a battery, he would no doubt consider it the loss or injury of some vital part of the human



frame, whereas in certain circumstances, this would be downright murder. A lawyer, however, will tell you that *laying a finger* improperly upon another, constitutes a battery. On the other hand, a lawyer who saw the operation incident to the extirpation of an eye, a fracture of the skull, or a dislocation of the limbs, would pronounce them all terrible calamities; yet a surgeon would tell you, with a face of perfect composure, with heart of stone, and nerves of steel, that these are common-place occurrences,—mere trivial matters unattended by much danger,—and whisk you through the whole anatomy of the human system and catalogue of physical ills, with as much self-complacency and good humor, as he would lead his partner down a dance. Let us shun both extremes. I ask you to decide this case neither by the technical absurdities of the one, nor refined barbarities of the other. “*In medio utissimus*,” the middle course is best. Let then the testimony of your unbiassed and unperverted fellow-citizens govern your deliberations; they who know that a fellow creature may be injured and still retain his head upon his shoulders, and yet at the same time do not carry this belief to such an extreme as to lead them to consider the wind of the fist as an absolute assault.

But, gentlemen, I pledge myself to show you that the evidence of even the doctors themselves, and particularly that of Dr. Cullen, inimical as it intentionally was to the cause that I espouse, is for the most part illusory,

fallacious, and unfounded. Dr. Cullen tells you that he received a note from Mr. John Binns, requesting him in company with Dr. Griffiths, to call upon Anna Maria Martin, to examine her back, and afford any medical or surgical aid that might be required. Is not this a proof that Binns himself thought the child materially injured? why talk of medical and surgical assistance; why send two learned members of the faculty? was not *one* sufficient?—or did he believe the case to be so desperate as to require consultation? I leave you to divine his thoughts and his motives, while I proceed to my anatomical and physiological inquiries. (Reads the testimony.)

“There was,” says Dr. Cullen, “no swelling at the time of examination, though the flesh was still discolored. Now gentlemen, I do not, as the doctor does, pretend to be a complete surgeon or anatomist, yet those branches of medical science formed one of the pastimes of my youth, and although I never wrote a treatise,—although I never committed one to memory,—although I never had occasion to appear in the capacity of a physician before a court and jury in behalf of a friend,—and although I never instructed counsel to ask me questions calculated to elicit my knowledge and conceal my ignorance,—yet I will endeavor to rescue so much of my reading from the grasp of forgetfulness, as may enable me briefly, but I trust satisfactorily, to answer the medical hypotheses, (they deserve no better



name,) which have been forced upon our attention. In the first place then, the want of swelling at the time of examination, as was asserted by the doctors, was a conclusive proof of the want of severity. This I deny, and I throw myself with confidence upon your own knowledge to support the denial. I refer you to that book, which lies open before you all as a refutation of such doctrine---I mean the book of experience. You have all no doubt observed, in cases of children, where they have received any very severe contusions and bruises in consequence of falls, that the swelling subsides and the extravasated blood is completely absorbed in the course of a very few days. The absorbents in children, particularly in those of a vigorous constitution, are extremely powerful, and will take up large quantities of extravasated blood in a short time, and will indeed remove many other obstructions to a healthy and free exercise of the animal functions, such as decayed bones, &c. These absorbents are certain vessels connected with the internal skin or cutis vera, by means of the cellular membrane, and are wisely provided by nature to supply or remedy the defects or injuries of the veins; as when, for instance, the blood-vessels or veins are ruptured by extreme violence, and are so impaired as to prevent their returning the blood to the heart, here the absorbent powers interfere, assist the wounded vein, and thus prevent mortification or suppuration, which must otherwise inevitably ensue.



The doctors also stated that the bruised parts bore compressing and rubbing without any symptoms of pain, and this fact appeared to afford matter of considerable exultation to the opposite counsel. But, gentlemen, I defy them, had they ransacked all the stores of their invention, to have produced a circumstance which would militate more strongly against themselves. Why, the answer is PLAIN, the parts were DEAD. The violence of the beating had in some measure, at any rate, destroyed their vitality : this is therefore a proof of the *severity*, not the *mildness* of the punishment.

But they say “there was no laceration or breaking of the outside skin and consequently no blood.” The doctrine of outside and inside, of external and internal skin upon which the doctors have dwelt with so much emphasis although by no means obscure itself, has been so wrapped up in technical mysteries, as to require some slight elucidation ; and as Dr. Cullen has taken some liberties with the *Common Law*, he must in turn indulge me with a few strictures upon this part of his admirable thesis. The outside or visible skin is known by the name of cuticle epidermis or scarf, and I presume is what is vulgarly denominated “the scurf,” as when the hand is grazed roughly by any hard substance we might say the *scurf* is merely rubbed off. This skin is perfectly insensible, and serves as a sort of protection or coat to the inside skin, which is highly sensible. It is to mankind what scales are to a fish, so that you may

break the outside skin or cutis vera, or true skin, without destroying or removing the scarf or scales, which form an integument sufficiently close and firm to prevent the emission of blood ;—you may completely crush a fish without discomposing a single scale.

So far, then, from the blood's failing to flow, being an argument for the defendant, it is subservient to the prosecution. The *internal* skin, I have shown you, may be broken without breaking the external skin, and if this take place, the contusion is much more dangerous than in cases of an incised wound, where nature is relieved in a great measure without the tardy and painful process of absorption. But, says Dr. Cooper,\* I do not believe the scarf skin *can* be broken without the flowing of blood. With great reverence and respect for the doctor, I must be allowed to dispute this ; nay I will go further, and broadly assert, that the scarf and the true skin may both be broken and still no blood emitted. As to the scarf, you have often seen it rubbed off without the issuing of any blood, and it therefore requires no reasoning from me. In respect to the true skin, I say with perfect confidence, that although the slightest puncture will be followed by blood, yet when the wound is extremely severe, and the parts are very much bruised, the channels of the blood become choked and there is little or no bleeding. As in the case related in Chessel-

\* Dorsey's Cooper, p. 63.



den\* of the unfortunate miller whose arm was torn off by the cog-wheel of a mill, and also in a case cited by Dr. Physick in his admirable lecture, of a similar accident happening to a boy, in both of which instances, though one of the most material arteries in the human system was completely severed, yet scarcely sufficient blood issued from the wounded body to stain the linen that was bandaged around it. Go into the field of battle, examine the victims of war, many of them almost entirely dismembered, yet struggling in the grasp of death for days—their arms, their legs torn away—why is this? the current of life may be exhausted in a single hour, why then this lingering? because the vitality of the parts is so destroyed as to prevent the exercise of their function, and hence the hopeless invalid is for some time subjected to the horrors of a living death. So much for the theory of Dr. Cooper; it has no foundation in fact. As to the case of the dead man's mark, or the appearance upon the skin of spots resembling iron mould, which Dr. Cullen has adverted to, in illustration of his theory of absorption and extravasation, I will venture to assert that both the name and nature ascribed to them are equally unknown to the medical world. Those spots are not the effect of extravasated blood, but probably arise from the serum, one of the constituents of the blood, oozing through the veins. The case of Mrs.

\* Chesselden's Anatomy, p. 321.

G.'s child was also unfortunately alluded to by the Doctor in explanation of his enigmas ; What ! shall we suffer him to tell us that the mark on the back of an infant arising from a slight blow of the mother's hand, is an extravasation of blood. 'Tis silly, 'tis preposterous in the extreme ; every child-nurse knows better ; why, according to the gentleman's notion, every hectic glow of the blood—every fever—every blush that mantles on a lady's cheek, is an extravasation. But cast your eyes upon the resplendent pages of Darwin and of Brown, of Rush and of Physick, and this misty error is at once dispelled. They will tell you that the discoloration is the effect not of ruptured vessels but of too much excitement ; not of blood being forced out of its natural channels, but of its being propelled through these channels with unusual violence. Feel the pulse during a fever ; it will be found much fuller and stronger than usual, and the same observation will apply equally well in relation to a blush. Hope, shame, anger, anxiety,—almost any sudden emotion of the mind—will so affect the physical system, as to throw unusual quantities of blood into the veins, and thus of consequence, increase the pulse and flush the features ; but no man but the learned doctor, I am sure, ever dreamt of this being an extravasation. A single remark and I bid farewell, a long farewell, to physic.

I have been really astonished and disgusted, to discover so much madness in the sequel of that story,



whose preface promised so much wisdom. To leave now this medical jargon, which is as inconsistent with itself as with reason, and fall to something of a readier method; what say your unbiassed and unpervverted fellow-citizens.

Mrs. Maria Welsh tells you, that the beating was extremely severe, from the shoulders down to the waist; upon enquiring the cause, the child told precisely the same story as that related in court.

What says Mrs. Brown? "a most cruel beating!" What says Mrs. Burrows? "the child's back exhibited the most awful spectacle I ever beheld; no welts could be distinguished; it was one entire bruise; it resembled beeves' liver; the blood seemed just ready to start from the skin." What says Dr. Frick? What says his Honor the Mayor, a man who for many years held the highest and most responsible station of your city as a magistrate and guardian, and who has discharged his various and arduous duties with credit to himself, and advantage to the community. He tells you that never in the exercise of his functions, either in his office, or in the court, has he beheld so severe a beating on so young a child. It is unnecessary for me to indulge in a more minute recapitulation of the testimony; to advert to it, is I trust in itself, sufficient to destroy all the wire-drawn notions, and burst all the airy bubbles that may be blown upon the case.

After such conclusive evidence, can any man seri-



ously listen for a moment to a labored argument, professing to show, that such beating as this is justifiable, either “in foro conscientia” or “in foro humano”—in the sight of God, or in the sight of man. If the child was guilty, which I deny, her guilt would not have authorized such gross inhumanity. If the laws were violated, they stand their own avengers. Let her be charged with larceny, let her be indicted and arraigned. This respectable jury shall try, and this honorable court shall pronounce upon her crime; but thank Heaven, no man—not the Governor of the State, not the President of the United States, nay, not even John Binns himself, can discharge in this free and happy land, the four-fold office of witness, juror, judge and executioner.

In the capacity of a master, I admit he had the authority of the law, in inflicting moderate chastisement for salutary, not vindictive purposes. This is a right possessed by all persons standing in the relation of *husband*, father, teacher, captain and master, and which may be exercised on their *wives*, children, pupils, sailors and servants. But “in the name of all the Gods at once,” what possible operation is the admission of this abstract principle to have, upon the present controversy? In order that they may enjoy its protection, they must bring themselves within its provision. Moderation is essential to justification; for at the very last session of the court, a schoolmaster was

convicted for an assault and battery upon a scholar, because he had exceeded the limits of propriety in punishment. Indictments and convictions of captains for abuse of sailors, are frequent notwithstanding the rope's end privilege; and but a few days since a client of mine, was deservedly condemned and sentenced to imprisonment, merely for giving his wife a single blow, though in my opinion, sex aside, she merited a dozen.

To sum up all then, we say that in our case any punishment, however slight, would have been unwarrantable, and an assault and battery; because there was *no offence*; and we say further that the blackest and most *heinous offence* would have been no justification for a beating so severe.

I have now done my part, feebly and imperfectly, I must acknowledge, but as fully as my feelings and inexperience would permit. It remains for you to do yours. The worldly destinies of this poor child are now in your hands. Her character and her cause are with you; you may stigmatize her with dishonor and dishonesty, or wash her white as snow; you may either cast her like a loathsome weed from the bosom of society, or exhibit her as an example of suffering innocence to the philanthropic and the humane. Added to this, you are to day to declare whether mingled tears and blood are subjects of commiseration with an American jury? Whether domestic tyrants are to trample with impunity upon the helpless victim, whom misfortune or distress



may have placed at their feet? Whether your own children, or the children of your friends,—of your fellow-citizens,—of your fellow-creatures,—for who shall control the fickle smiles of fortune?—should they be reduced to the miserable situation of this poor child, helpless, hapless, and forlorn,—should they be sundered from your fostering and protecting arms, and subjected to the merciless and iron despotism of men like the defendant,—which heaven forbid!—you are I say, now to declare, if such were their sad lot, whether they should pour forth their infant lives in irremediable distress, or look forward to your verdict and the records of this court as the heralds which proclaim their deliverance at hand. I invoke you then, by that holy tie which subsists between parent and child; by the sacred rites of hospitality; by the immutable principles of justice, to redress the injuries of this injured, friendless, stranger child. Will you hereafter dare to come into this court when your own children are abused, and claim the intervention of the law, and yet refuse it to this friendless girl? Why, your own verdict shall be cast into your teeth; “Even-handed justice shall return the poisoned chalice to your own lips;” and the opposing counsel shall tauntingly exclaim, “What! are you, whose flinty hearts resisted the tears and blood of the oppressed; are you, who sanctioned unparalleled severity in the case of Anna Maria Martin, the friendless German child; are you so pecu-



liarly sensitive and alive when your own flesh and blood are concerned? AWAY WITH YOU! Never, until you obliterate from the pages of that book, by tears of penitence, the record of this day's error,—of this day's WRONG, can you expect an attentive ear to the story of your own griefs. REMEMBER THIS. And above all remember, that with what judgment ye judge, ye “shall be judged,” and with what measure you mete, it shall be measured unto you again.

VERDICT GUILTY.